

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,)	
)	
v.)	ID#: 0411003978
)	
ANTOINETTE COOPER,)	
Defendant.)	

ORDER

**Upon Defendant’s Criminal Rule 35 “Motion for Correction of Sentence” –
DENIED**

1. On June 29, 2005, Defendant pleaded guilty to three counts of Robbery in the first degree.

2. On September 9, 2005, Defendant was sentenced to three years in prison for each robbery, followed by probation. The prison sentence, totaling nine years, was the minimum sentence Defendant could have received.¹

3. On October 2, 2009, Defendant filed the above-captioned motion. While the motion argues, in conclusory fashion, that the sentence violates Defendant’s rights because it is “harsh,” “cruel and unusual,” the motion actually features claims of ineffective assistance of counsel surrounding Defendant’s guilty

¹ 11 *Del.C.* § 832(b)(1).

plea.

4. To the limited extent the motion actually falls under Superior Court Criminal Rule 35, it is timely. The sentence, however, is legal. Assuming the court had discretion, it might have sentenced Defendant to less than nine years in prison. Nevertheless, it is well within acceptable limits for the General Assembly to have mandated, as it did, that anyone convicted of an armed robbery must serve at least three years in prison, minus earned “good time” credit. In short, if some might consider the mandatory minimum sentence “harsh,” it was not “cruel and unusual.”

5. As for Defendant’s claim that “ineffective counsel lead to a[n] illegal sentence . . . ,” and his claims of innocence, etc., even if true, they do not render the sentence illegal, or even incorrect. Claims of ineffective assistance of counsel, actual innocence, and challenges against anything leading up to Defendant’s guilty plea are subjects for a motion for postconviction relief under Superior Court Criminal Rule 61, not Rule 35.

6. For the foregoing reasons, Defendant’s October 2, 2009, “Motion for Correction of Sentence” is **DENIED**. If Defendant is seeking to have his convictions set aside, he must file an application under Superior Court Criminal Rule 61, using the prescribed form. If Defendant files a Rule 61 motion, it will be presented promptly for preliminary consideration to the judge who accepted

Defendant's plea of guilty. Of course, Defendant will have to overcome Rule 61's procedural bars, such as a Rule 61 motion's untimeliness. Meanwhile, the court now has only considered the sentence's lawfulness under Rule 35.

IT IS SO ORDERED.

Date: _____

Judge

FSS:mes

oc: Prothonotary (Criminal)

pc: Victoria R. Witherell, Deputy Attorney General
Antoinne Cooper, Defendant